

**ORDER OF THE STATE COMMITTEE OF PSYCHOLOGISTS REGARDING  
ISSUANCE OF A PROBATED LICENSE TO SCOTT R. BRANDHORST**

Comes now the State Committee of Psychologists and hereby issues its ORDER granting a PROBATED license, License No. 2005012218, to applicant, Scott R. Brandhorst. As set forth in Section 620.149.2, RSMo 2000<sup>1</sup>, the applicant may submit a written request for a hearing to the Administrative Hearing Commission seeking review of the State Committee of Psychologists's decision to issue a probated license. Such written request must be submitted to the Administrative Hearing Commission within 30 days of the delivery or mailing by certified mail of this Order. The written request should be addressed to the Administrative Hearing Commission, Room 640, Truman State Office Building, P.O. Box 1557, Jefferson City, Missouri 65102-1557. If no written request for review is received by the Administrative Hearing Commission within the 30-day period, the right to seek review of the State Committee of Psychologists's decision is waived.

Based upon the foregoing, the State Committee of Psychologists hereby states:

1. The State Committee of Psychologists ("Committee") is an agency of the state of Missouri created and established by § 337.050, RSMo, for the purpose of administering and enforcing the provisions of Chapter 337, RSMo, relating to psychologists.

2. On or about June of 1998, Scott R. Brandhorst ("Brandhorst") was convicted of driving while intoxicated.

3. On or about January 5, 2001, an Order was entered pursuant to a Consent Agreement between Brandhorst and the Arizona State Board of Behavioral Health Examiners whereby Brandhorst's provisional license as a professional counselor in Arizona, no. CC-2178A, was voluntarily revoked. Brandhorst admitted to having a sexual relationship with a client receiving services at Mohave Mental Health while Brandhorst was employed there. Brandhorst admitted to obtaining the client's telephone number by looking into the client's treatment file. The client was not a patient of Brandhorst's. Brandhorst was terminated from Mohave Mental Health for this conduct.

4. Based on the Arizona conduct and discipline, on or about November 29, 2001, the Missouri Committee for Professional Counselors issued a probated license, no. 2001031117, to Brandhorst in lieu of denial of his application for licensure as a professional counselor in Missouri. Pursuant to the probated license order, Brandhorst's license was placed on probation for a period of one year.

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<sup>1</sup>All statutory references are to the Revised Statutes of Missouri 2000, as supplemented, unless otherwise indicated.

5. On or about November 29, 2002, Brandhorst successfully completed the probation imposed by the Missouri Committee for Professional Counselors on his Missouri license. Brandhorst's license as a professional counselor in Missouri became unrestricted at that time.

6. On or about July 2, 2003, the Committee received an application for provisional licensure as a psychologist in Missouri from Brandhorst. Brandhorst's application stated Sandy Bowers, Psy. D. was the supervisor for Brandhorst's post-degree supervised experience.

7. Brandhorst answered "yes" to question 16 on the application. Question 16 states, "Have you ever had a professional license issued to you disciplined, restricted or limited in any way by a professional licensing board of this state, or any other state or country? (including but not limited to psychology?)"

8. Brandhorst answered "yes" to question 17 on the application. Question 17 states, "Have you ever been disciplined formally or informally for unethical behavior or unprofessional conduct while holding any professional license?"

9. Brandhorst answered "yes" to question 19 on the application. Question 19 states, "Have you ever been convicted, adjudged guilty by a court, pleaded guilty or pleaded nolo contendere in any criminal prosecution whether or not sentence was imposed?"

10. **Brandhorst attached a letter to his application for provisional licensure explaining his answers of “yes” to questions 16, 17 and 19, as described above.**
11. **On September 11, 2003, the Committee received by facsimile a letter from Sandra Bowers informing the Committee that Brandhorst had been terminated by the Bowers Center for Children and Families and was no longer under her supervision effective September 11, 2003.**
12. **On or about October 6, 2003, Brandhorst submitted to the Committee a post-degree supervision plan stating Mark Stocks, Psy.D. would be the supervisor for Brandhorst’s post-degree supervised experience.**
13. **On or about November 4, 2003, the Committee received from Brandhorst a letter stating he was no longer completing his post-doctoral residency with Dr. Bowers. The letter stated, “I left the Bowers Center for Children and Families because I was provided an opportunity to take a position that fit better with my career goals.”**
14. **On or about November 7, 2003, the Committee sent a letter to Dr. Bowers requesting clarification as to whether Brandhorst’s supervision was terminated, and if so, by whom the termination was initiated. Dr. Bowers was requested to complete an Attestation of Post-Degree Professional Experience for Brandhorst.**

15. On or about November 20, 2003, the Committee received the Attestation of Post-Degree Professional Experience completed by Dr. Bowers. Dr. Bowers stated on the attestation that Brandhorst was "fired" from the Bowers Center for Children and Families. Dr. Bowers stated that Brandhorst did not inform her of his prior disciplinary history. Dr. Bowers further stated that Brandhorst misrepresented to her that he had professional liability insurance when, in fact he did not.

16. On or about June 3, 2004, Brandhorst attended a closed fact-finding meeting before the Committee. Brandhorst told the Committee that on September 12, 2004, he resigned from the Bowers Center for Children and Families. Brandhorst denied being terminated by Dr. Bowers.

17. On or about November 10, 2004, the Committee issued Brandhorst a Probated Provisional License, license number PL0286.

18. On or about June 30, 2004, Brandhorst submitted his application for licensure as a psychologist.

19. On or about February 4, 2005, the Committee received a psychological evaluation of Brandhorst which was provided as fulfillment of a term and condition of Brandhorst's Probated Provisional License and the settlement which resulted from Brandhorst's appeal to the Administrative Hearing Commission seeking review of the Committee's decision to issue a probated provisional license to Brandhorst.

**20. On or about January 20, 2005, Brandhorst, through his counsel, requested an appearance before the Committee for the purposes of discussing his application for licensure.**

**21. On or about March 6, 2005, Brandhorst and his attorney appeared before the Committee to provide testimony and arguments as to the efforts Brandhorst has made to rehabilitate himself since his prior conduct.**

**22. The Committee considered all information received during the application process, including the testimony of Brandhorst to the Committee, arguments presented to the Committee, and the findings of the psychological evaluation to assess the level of rehabilitation of Brandhorst.**

**23. Brandhorst's misrepresentations to the Committee were for the purpose of obtaining permission to take the examination required for licensure as a psychologist.**

**24. Brandhorst's misrepresentations to Bowers were for the purpose of securing the post-doctoral supervision required for licensure as a psychologist.**

**25. Complying with the Ethical Rules of Conduct regulating the practice of psychology in Missouri is an essential function and duty of a psychologist.**

**26. Brandhorst's conduct violates 4 CSR 235-5(11) which states in relevant parts:**

**(11) Violations of Law.**

**(A) Violation of Applicable Statutes. The psychologist shall not violate any applicable statute or administrative rule regarding the practice of psychology.**

**(B) Use of Fraud, Misrepresentation or Deception. The psychologist shall not use fraud, misrepresentation or deception in obtaining a psychology license, in passing a psychology licensing examination, in assisting another to obtain a psychology license or to pass a psychology licensing examination, in billing clients or third-party payors, in providing psychological service, in reporting the results of psychological evaluations or services, or in conducting any other activity related to the practice of psychology.**

- 27. 4 CSR 235-5(11) is an ethical rule of conduct promulgated by the Committee.**
- 28. Brandhorst's misrepresentations to Dr. Bowers violate 4 CSR 235-5(11).**
- 29. Brandhorst had a relationship of professional trust and confidence with Dr. Bowers in that as Brandhorst's employer and supervisor Dr. Bowers relied on Brandhorst to be truthful with her regarding issues impacting on his treatment of patients at her clinic and the supervision he received from Dr. Bowers regarding the treatment of those patients, including issues pertaining to Brandhorst's past discipline and Brandhorst's inability to obtain professional liability insurance.**
- 30. Brandhorst's misrepresentations to Dr. Bowers violate the professional trust and confidence of Dr. Bowers.**
- 31. Brandhorst's misrepresentations to the Committee violate 4 CSR 235-5(11).**

**32. Brandhorst has a relationship of professional trust and confidence with the Committee in that in determining Brandhorst's eligibility for licensure the Committee relies on Brandhorst to be truthful regarding issues relevant to licensure, including issues regarding his supervised professional experience.**

**33. Brandhorst's misrepresentations to the Committee violate the professional trust and confidence of the Committee.**

**34. Brandhorst's conduct as described herein demonstrates a lack of good moral character. This conduct includes the conviction for driving while intoxicated, the conduct which led to the revocation of Brandhorst's license in Arizona, and Brandhorst's interaction with the Committee involving Dr. Bowers.**

**35. Cause exists for the Committee to deny Brandhorst's application for a license to practice psychology pursuant to § 337.020.2, RSMo 2000, which states:**

**2. Each applicant, whether for temporary, provisional or permanent licensure, shall submit evidence satisfactory to the committee that the applicant is at least twenty-one years of age, is of good moral character, and meets the appropriate educational requirements as set forth in either section 337.021 or 337.025, or is qualified for licensure without examination pursuant to section 337.029. In determining the acceptability of the applicant's qualifications, the committee may require evidence that it deems reasonable and proper, in accordance with law, and the applicant shall furnish the evidence in the manner required by the committee.**



**36. Cause exists for the Committee to deny Brandhorst's application for a license to practice psychology pursuant to the provisions of § 337.035, RSMo 2000, which state in relevant parts:**

**1. The Committee may refuse to issue any certificate of registration or authority, permit or license required pursuant to this chapter for one or any combination of causes stated in subsection 2 of this section. The committee shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of the applicant's right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.**

**2. The committee may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:**

**....**

**(3) Use of fraud, deception, misrepresentation or bribery in securing any certificate of registration or authority, permit or license issued pursuant to this chapter or in obtaining permission to take any examination given or required pursuant to this chapter;**

**....**

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

....

(13) Violation of any professional trust or confidence;

....

(15) Being guilty of unethical conduct as defined in "Ethical Rules of Conduct" as adopted by the committee and filed with the secretary of state.

....

37. The Committee hereby issues this Order in lieu of denial of Brandhorst's application for a license to practice psychology in Missouri.

#### **TERMS AND CONDITIONS**

Based on the foregoing, the license to practice psychology issued to Scott R. Brandhorst ("Licensee") is subject to the following terms and conditions:

38. License No. 2005 012218 is hereby placed on PROBATION for a period of one year (the "Disciplinary Period"). During the Disciplinary Period, Licensee must adhere to the following terms and conditions:

- A. Licensee must keep the Committee apprised at all times, in writing, of Licensee's current home and work addresses and telephone numbers.**
- B. Licensee is required to pay to the Committee, in a timely fashion, all requisite fees required by law to renew and keep current Licensee's psychology license in Missouri.**
- C. Licensee is required to comply with all provisions of Chapter 337, RSMo; the rules and regulations duly promulgated by the Committee; and state and federal criminal laws.**
- D. Licensee must provide periodic reports of Licensee's compliance with this Order every three months. Reports must be received before March 1, June 1, September 1, and December 1 of each year. It is Licensee's responsibility to ensure that these reports are provided in a timely manner.**
- E. At Licensee's expense, Licensee must agree to meet with the Committee at reasonable intervals designated by the Committee.**
- F. Licensee must give the State Committee of Psychologists, or its representative permission to review Licensee's personal treatment or medical records.**

39. The parties to this Order understand that the State Committee of Psychologists will maintain this Order as an open and public record of the Committee as provided in Chapters 337, 610, and 620, RSMo.

40. In the event the Committee determines that Licensee has violated any term or condition of this Order, the Committee may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline Licensee.

41. No order shall be entered by the Committee pursuant to the preceding paragraph of this Order without notice and an opportunity for hearing before the Committee in accordance with the provisions of Chapter 536, RSMo.

42. If the Committee determines that Licensee has violated a term or condition of this Order, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the Committee may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Order in its determination of appropriate legal actions concerning that violation.

SO ORDERED EFFECTIVE THIS 22nd day of April 2005.

State Committee of Psychologists

Pamela Groose

Pamela Groose  
Executive Director  
State Committee of Psychologists

Before the  
Administrative Hearing Commission  
State of Missouri

|                      |   |                |
|----------------------|---|----------------|
| SCOTT R. BRANDHORST, | ) |                |
|                      | ) |                |
| Petitioner,          | ) |                |
|                      | ) |                |
| vs.                  | ) | No. 05-0816 PS |
|                      | ) |                |
| STATE COMMITTEE OF   | ) |                |
| PSYCHOLOGISTS,       | ) |                |
|                      | ) |                |
| Respondent.          | ) |                |

**DECISION**

We deny the application of Scott R. Brandhorst for a psychologist license because the State Committee of Psychologists (“the Committee”) has carried its burden of proving that Brandhorst used fraud to gain employment and a license, and the record contains no evidence to support any terms of probation.

**Procedure**

Brandhorst filed his complaint on May 24, 2005, seeking our review of the Committee’s decision to issue him a license subject to probation. We convened a hearing on the complaint on January 31 and February 7, 2006. Brandhorst filed the last written argument on September 1, 2006. In written argument, each party asks us to strike portions of its adversary’s written argument. We deny those motions.

a. Employment Records

On January 30, 2006, Brandhorst filed a motion in limine seeking to exclude from evidence any records and testimony relating to his employment with Sandra Bowers, Psy.D. Brandhorst argues that he has a fundamental right of privacy in his employment records, citing *State ex rel. Crowden v. Dandurand*.<sup>1</sup> But in that case, the court held that:

a subpoena for employment records must be limited to the issues raised in the pleadings. A plaintiff waives the privacy right to the extent that her pleadings raise issues to which the employment records relate.<sup>[2]</sup>

The Committee may present:

information “reasonably related to the injuries and aggravations claimed by the [petitioner] in the present suit.”<sup>[3]</sup>

When a plaintiff brings a claim involving facts in employment records, he waives confidentiality:

A plaintiff waives the privacy right to the extent that her pleadings raise issues to which the employment records relate.<sup>[4]</sup>

In other words, Brandhorst cannot claim that he has the right to an unrestricted license, which depends in part on his employment with Bowers, and bar evidence on his employment with Bowers. We deny the motion in limine as to evidence of employment.

b. Transcript

Also on January 30, 2006, Brandhorst filed a motion in limine seeking to exclude from evidence Respondent’s Exhibit 29. We denied that motion and overruled the objection, but Brandhorst renews it in written argument. Respondent’s Exhibit 29 is a transcript of a hearing before the Committee. Brandhorst objects that the Committee has not offered the proper foundation. Brandhorst cites rules of evidence that rely on the availability of the original tape

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<sup>1</sup>970 S.W.2d 340, 343 (Mo. banc 1998).

<sup>2</sup>*Id.* (citations omitted).

<sup>3</sup>*State ex rel. Tally v. Grimm*, 722 S.W.2d 604, 605 (Mo. banc 1987).

<sup>4</sup>970 S.W.2d at 343.

recording, including the rule of spoliation and the best evidence rule, applicable in a circuit court trial.

But for our procedure – a contested case – the General Assembly has provided different rules. Section 536.070<sup>5</sup> provides:

(2) Each party shall have the right . . . to introduce exhibits[.]

\* \* \*

(9) Copies of writings, documents and records shall be admissible without proof that the originals thereof cannot be produced, if it shall appear by testimony or otherwise that the copy offered is a true copy of the original[.]<sup>6</sup>

(10) Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of an act, transaction, occurrence or event, shall be admissible as evidence of the act, transaction, occurrence or event, if it shall appear that it was made in the regular course of any business, and that it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence, or event or within a reasonable time thereafter. All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect the weight of such evidence, but such showing shall not affect its admissibility. The term “**business**” shall include business, profession, occupation and calling of every kind.

Under those provisions, the Committee laid the proper foundation for entering Respondent’s Exhibit 29 into the record. All other circumstances go to the weight of the evidence. Therefore, we maintain our order overruling the objection to Respondent’s Exhibit 29.

### **Findings of Fact**

1. On June 4, 1998, the Boone County Circuit Court found Brandhorst guilty, on his guilty plea, of driving while intoxicated (“DWI”). On November 30, 1998, the court imposed sentence, but suspended its execution.

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<sup>5</sup>Statutory references are to RSMo 2000 unless otherwise noted.

<sup>6</sup>This provision also allows us to sustain a best evidence objection if we give the Committee a chance to produce the original record, but we did not sustain the objection.

2. In 1998 and 1999, Brandhorst was employed at Mohave Mental Health (“Mohave”) in Lake Havasu City, Arizona, as a State-licensed professional counselor. While so employed, he had a sexual relationship with a Mohave client, not his patient, whose telephone number he found by looking at the client’s intake sheet in her file without permission (“the Mohave conduct”). Based on that conduct, on January 5, 2001, the Arizona State Board of Behavioral Health Examiners entered an order pursuant to a consent agreement with Brandhorst stating that his provisional Arizona license as a professional counselor was voluntarily revoked.

3. On November 29, 2001, based on the Mohave conduct and Arizona’s revocation, the Missouri Committee for Professional Counselors issued a probated license to Brandhorst in lieu of denying his professional counselor license application. Pursuant to that action, Brandhorst’s license was subject to probation for one year. Brandhorst successfully completed the probation, and his license as a professional counselor in Missouri became unrestricted at that time.

4. In May 2003, Brandhorst received his doctoral degree in psychology from Forest Institute of Professional Psychology located in Springfield, Missouri. Brandhorst completed his one-year post-degree supervised experience, passed the psychology licensing exam, and passed the state jurisprudence exam.

5. On July 2, 2003, the Committee received an application for a license and provisional license as a psychologist (“the application”) from Brandhorst. Brandhorst answered “yes” to the following questions on the application for provisional licensure:

16. Have you ever had a professional license issued to you disciplined, restricted or limited in any way by a professional licensing board of this state, or any other state or country? (including but not limited to psychology?)



17. Have you ever been disciplined formally or informally for unethical behavior or unprofessional conduct while holding any professional license?

\* \* \*

19. Have you ever been convicted, adjudged guilty by a court, pleaded guilty or pleaded nolo contendere in any criminal prosecution whether or not sentence was imposed?

Brandhorst attached a letter to his application for provisional licensure explaining his answers of “yes” to those questions.

6. Brandhorst’s application states that Sandy Bowers, Psy.D., was the supervisor for Brandhorst’s post-degree supervised experience. He worked for Bowers at the Bowers Center for Children and Families. Brandhorst did not like the position with Bowers because of the community and Bowers’ practice style and began to consider other placements.

7. Brandhorst’s agreement with Bowers included producing proof of malpractice insurance. Brandhorst applied for malpractice insurance when he started working for Bowers in July 2003. Bowers set a deadline for him to produce proof of malpractice insurance, but he produced none. On September 11, 2003, Brandhorst told Bowers that his application for insurance was denied and revealed to her information on the Mohave conduct.

8. On September 11, 2003, Bowers gave Brandhorst a “Letter of Termination” for him to sign. The letter stated:

This a 30-day notice of the termination of Scott Brandhorst’s employment and supervision at the Bowers Center for Children and Families.

Reason [“the Bowers charges”]:

Misrepresentation of having professional liability insurance coverage while practicing

Inability to become insured

Withholding information about being on probation

Effective immediately:

Dr. Brandhorst will be prohibited from participating in any type of business at the Bowers Center, including providing therapy or evaluations, accessing records, talking with clients or staff. He is prohibited from talking with professional contacts (e.g. DFS, caseworkers, etc.) regarding current cases associated with the Bowers Center. Additionally, he will be prohibited from coming onto the property including the parking lot, yard, and inside the office. This action is taken for professional liability insurance reasons.

Severance Pay:

Dr Brandhorst will be paid \$ 180.00 as severance pay. This amount is equivalent to the pay he received in the past month and could possibly have made during the next 30 days. If he obtains a Medicaid number and we are able to collect for the services he rendered, we will mail him 60% of those earnings. The Bowers Center will also pay him 60% of any other collections that are made from the services he rendered.

I have read and understand the terms of this termination. I accept the 30 day notice which places my final day of employment on October 10, 2003.

I will attend an exit interview on this date.

\_\_\_\_\_  
Scott Brandhorst, Psy. D, LPC

\_\_\_\_\_  
Date

\_\_\_\_\_  
Sandy Bowers, Psy.D  
Licensed Clinical Psychologist and Supervisor  
-OR

\_\_\_\_\_  
Date

I have read the terms of this termination. I would prefer an immediate termination effective today.

I consider today's meeting as my exit interview.

\_\_\_\_\_  
Scott Brandhorst, Psy. D, LPC

\_\_\_\_\_  
Date

\_\_\_\_\_  
Sandy Bowers, Psy.D

\_\_\_\_\_  
Date

Brandhorst did not sign the Letter of Termination.

9. Also on September 11, 2003, When Brandhorst left the offices, Bowers sent a facsimile transmission to the Committee informing the Committee that Brandhorst:

is no longer employed by the Bowers Center for Children and Families and is no longer under my supervision effective September 11, 2003.

Bowers also agreed to meet with Brandhorst the next day, hoping that Brandhorst might depart on amicable terms. On September 12, 2003, Brandhorst handed a letter to Bowers stating that he resigned from Bowers' employment effective that date.

10. On September 24, 2003, Brandhorst faxed a letter to the Committee stating that he would soon file a new post-degree supervision plan. On October 9, 2003, the Committee received Brandhorst's post-degree supervision plan stating that Mark Stocks, Psy.D., would be the primary supervisor for Brandhorst's post-degree supervised experience. He later added Glenna Weis as his secondary supervisor.

11. While gaining supervised experience, Brandhorst maintained strict professional distance from students and patients so as to prevent any inappropriate overlap with his social life, such as occurred in the Mohave conduct.

12. By letter dated October 24, 2003, the Committee shared with Brandhorst Bowers' statement that the termination occurred on September 11, 2003. On November 4, 2003, the Committee received from Brandhorst a letter stating:

I left the Bowers Center for Children and Families because I was provided an opportunity to take a position that fit better with my career goals.

13. At the Committee's request, Bowers filed an attestation of post-degree professional experience with the Committee on November 20, 2003, verifying that Bowers had fired Brandhorst.

14. On June 3, 2004, Brandhorst attended a closed meeting of the Committee. During that meeting, Brandhorst denied that Bowers terminated him and told the Committee that he resigned. On November 10, 2004, the Committee issued Brandhorst a probated provisional

license. As part of their agreement on the provisional license, the parties agreed that Brandhorst would undergo a psychological evaluation (“the evaluation”) by a licensed psychologist of the Committee’s choosing from a list submitted by Brandhorst. The Committee chose Nancy Williger, Psy.D.

15. On January 20, 2005, Brandhorst, through his counsel, requested an appearance before the Committee for the purposes of discussing his application for licensure. On February 4, 2005, the Committee received the evaluation. At the Committee’s meeting on March 6, 2005, the Committee concluded that Brandhorst passed the Committee’s oral interview. On April 22, 2005, the Committee issued Brandhorst a permanent license subject to one year of probation.

### **Conclusions of Law**

We have jurisdiction to hear Brandhorst’s complaint because he seeks our review of the Committee’s decision to issue a probationary license.<sup>7</sup>

Both parties focus on the propriety of the Committee’s procedure. Brandhorst argues that the Committee did not follow its usual processes in investigating him. The Committee argues that:

it properly issued Brandhorst a probated license, in lieu of denial, that the terms and conditions of said probated license are just and reasonable and well supported by competent and substantial evidence, not contrary to law, not arbitrary, capricious nor do they constitute any abuse of discretion by the Committee.

The Committee argues that this Commission functions as an appellate court, reviewing the Committee’s action for error, only to affirm or deny and not to exercise any discretion. The Committee’s argument is contrary to all authority on the issue.

The Committee argues that no case law discusses § 620.149. But case law expressly states that a statute purporting to provide appellate court-type review before this Commission

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<sup>7</sup>Section 620.149.2. We set forth that section at length as an appendix to this decision.

violates the Missouri Constitution's separation of powers clause,<sup>8</sup> or direct judicial review clause,<sup>9</sup> or both.<sup>10</sup> The Committee's reading may also violate the due process clauses in the constitutions of both Missouri<sup>11</sup> and the United States because, under the Committee's reading, a licensee could never have a discretionary decision made on the record:<sup>12</sup>

Still another reason for rejecting the statutory construction argued for by the [Committee] is that to do otherwise would raise serious constitutional problems. One such problem would be that of procedural due process. If the [Committee] were correct, it would have the right to exercise a discretion concerning the licensure of applicants without holding any hearing whatsoever. This is the necessary result of the [Committee]'s position, since . . . it no longer has any power to hold hearings or make findings of fact. The discretionary denial of a license under those circumstances might very well be vulnerable under the due process requirement that such a licensing discretion can be exercised only "after fair investigation, with such a notice, hearing and opportunity to answer for the applicant as would constitute due process."

Another constitutional question which would be raised by accepting the [Committee]'s statutory interpretation is that of equal protection of law. Any discretion exercised in a manner unrelated to factual findings could be vulnerable to serious charges that this constituted arbitrary action.<sup>[13]</sup>

The Committee cites no case law overruling those authorities.

The statutes also refute the Committee's argument. No statute authorizes us to undertake any judicial-style review of some record made before the Committee. No statute provides for filing an agency record with us. On the contrary, § 620.149.2 states:

If the board issues a probated license, the applicant may file . . . a written complaint with the administrative hearing commission seeking review of the board's determination. . . . Hearings shall be held pursuant to chapter 621, RSMo.

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<sup>8</sup>Mo. Const. art. II, § 1.

<sup>9</sup>Mo. Const. art. V, § 18.

<sup>10</sup>*Asbury v. Lombardi*, 846 S.W.2d 196, 199 (Mo. banc 1993).

<sup>11</sup>Mo. Const. art. I, § 10.

<sup>12</sup>U.S. Const. Am. V and XVI.

<sup>13</sup>*State Bd. of Regis'n for the Healing Arts v. Finch*, 514 S.W.2d 608, 614 (Mo. App., K.C.D. 1974) (citations omitted).

Chapter 621, RSMo, provides that this case is governed by Chapter 536, RSMo.<sup>14</sup> Chapter 536 provides for responsive pleadings,<sup>15</sup> discovery,<sup>16</sup> dispositive motions,<sup>17</sup> rules of evidence,<sup>18</sup> and written argument.<sup>19</sup> Our record may show facts different from those on which the Committee based its decision and may require action different from the action that the Committee took. To affirm or deny the Committee's action based on our separate record in this separate proceeding, not the Committee's record of its own proceedings, would be irrational.

The reason that the General Assembly instructs us to make a record is so that we will base our decision on it. Our procedure is "de novo," meaning "anew."<sup>20</sup> We do not superintend the Committee's operations.<sup>21</sup> The decision before us is simply the decision that was before the Committee: how to decide Brandhorst's application.<sup>22</sup> Our action is the final agency decision, subject to judicial review. Section 620.149.1 provides:

Whenever a board within the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of a license, the board, as an alternative to refusing to issue a license, may, at its discretion, issue to an applicant a license subject to probation.

The Committee's answer sets forth the Committee's reasons.<sup>23</sup> Such reasons must support both denial and discipline.<sup>24</sup> The Committee has the burden of proving the reasons for probation.

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<sup>14</sup>Section 621.135.

<sup>15</sup>Section 536.068.

<sup>16</sup>Section 536.073.2.

<sup>17</sup>Section 536.073.3.

<sup>18</sup>Section 536.070.

<sup>19</sup>Section 536.080.1.

<sup>20</sup>*Lederer v. Department of Social Servs.*, 825 S.W.2d 858, 864 (Mo. App., W.D. 1992).

<sup>21</sup>*Missouri Health Facilities Review Comm. v. Administrative Hearing Comm'n*, 700 S.W.2d 445, 450 (Mo. banc 1985).

<sup>22</sup>*Geriatric Nursing Facility v. Department of Social Servs.*, 693 S.W.2d 206, 209 (Mo. App., W.D. 1985).

<sup>23</sup>*Ballew v. Ainsworth*, 670 S.W.2d 94, 103 (Mo. App., E.D. 1984).

<sup>24</sup>Brandhorst argues that being fired by Bowers and lack of insurability are not cause for discipline. He also alleges that he disclosed the Mohave discipline and his probationary Missouri professional counselor license to the Committee. None of those assertions addresses any charge in the amended answer.

## I. Fraud

The Committee cites the Mohave conduct, the Bowers charges, and Brandhorst's written and spoken denials that Bowers fired him before the Committee ("the Committee statements") under the provisions of § 337.035.2 allowing denial and discipline for:

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

\* \* \*

(13) Violation of any professional trust or confidence;

\* \* \*

(15) Being guilty of unethical conduct as defined in "Ethical Rules of Conduct" as adopted by the Committee and filed with the secretary of state.

The Committee argues that Brandhorst violated its ethical rule 4 CSR 235-5.030(11):

(A) The psychologist shall not violate any applicable statute or administrative rule regarding the practice of psychology.

(B) Use of Fraud, Misrepresentation or Deception. The psychologist shall not use fraud, misrepresentation or deception in obtaining a psychology license, in passing a psychology licensing examination, in assisting another to obtain a psychology license or to pass a psychology licensing examination, in billing clients or third-party payors, in providing psychological service, in reporting the results of psychological evaluations or services, or in conducting any other activity related to the practice of psychology.

Professional trust is the reliance on the special knowledge and skills that professional licensure evidences.<sup>25</sup> Violation of a professional trust includes an abuse of the power imbalance on matters within the knowledge of the licensed profession between the professional and client.<sup>26</sup> But Missouri courts do not limit professional trust to clients.<sup>27</sup> Deception is the act of causing

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<sup>25</sup>*State v. Pappas*, 337 N.W.2d 490, 495 (Iowa 1983).

<sup>26</sup>*Siegel v. Kranis*, 288 N.Y.S.2d 831, 835 (N.Y. App. Div. 1968).

<sup>27</sup>*Cooper v. Missouri Bd. of Pharmacy*, 774 S.W.2d 501, 504 (Mo. App., E.D. 1989).

someone to accept something untrue as true.<sup>28</sup> Misrepresentation is a falsehood or untruth made with the intent of deceit rather than inadvertent mistake.<sup>29</sup> Fraud is an intentional perversion of truth to induce another person to act in reliance upon it.<sup>30</sup> We may infer fraudulent intent from the circumstances of the case.<sup>31</sup>

a. Mohave

As to the Mohave conduct, we infer from the record that Mohave relied on Brandhorst's professional counselor license. Because § 337.035.2(13) addresses "any" professional trust or confidence, Brandhorst's intrusion into a patient's file for personal gratification violated that trust. The Mohave conduct is a reason for denial or a probationary license under § 337.035.2(13).

The Committee also cites the Mohave conduct under § 337.035.2(6) and (15). It argues that looking into files of his employer to obtain the telephone number of a patient of his employer which resulted in a sexual relationship with that patient involved the use of misrepresentation and deception. We disagree with the Committee for two reasons. First, the Committee has not shown that Brandhorst uttered any falsehood, untruth, or perversion of truth in connection with the Mohave conduct. Second, the Committee has not shown that conduct while a professional counselor violates an ethical rule for psychologists.

b. Bowers and the Committee

As to the Bowers charges and Committee statements, the Committee additionally cites the provision of § 337.035.2(5) allowing denial and discipline for:

dishonesty . . . in the performance of the functions or duties of any profession licensed or regulated by this chapter[.]

Dishonesty is a lack of integrity, a disposition to defraud or deceive.<sup>32</sup>

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<sup>28</sup>MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 322 (11th ed. 2004).

<sup>29</sup>*Hernandez v. State Bd. of Registration for Healing Arts*, 936 S.W.2d 894, 899 n.2 (Mo. App., W.D. 1997).

<sup>30</sup>*Id.* at 899 n.3.

<sup>31</sup>*Essex v. Getty Oil Co.*, 661 S.W.2d 544, 551 (Mo. App., W.D. 1983).

<sup>32</sup>MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 359 (11th ed. 2004).



Further, as to the Committee statements, the Committee cites the provisions of § 337.035.2 allowing denial and discipline for:

(3) Use of . . . misrepresentation . . . in securing [a psychologist license];

\* \* \*

(5) . . . misconduct [or] misrepresentation . . . in the performance of the functions or duties of [a psychologist.]

Misconduct is the willful doing of a wrongful act.<sup>33</sup> Because fraud is an intentional act, it is a type of misconduct. “Concealment of a material fact of a transaction, which a party has the duty to disclose, constitutes fraud as actual as by affirmative misrepresentation.”<sup>34</sup> That duty arises when the concealer is a fiduciary or has superior knowledge.<sup>35</sup>

The Committee charges that Brandhorst concealed the Mohave conduct and his lack of malpractice insurance to gain a position with Bowers, and that he lied about being fired to gain a license from the Committee. The Committee has shown no professional duty to disclose the Mohave conduct. But we agree with the Committee as to other allegations.

Brandhorst alleges that he thought that he was insured when he applied for insurance, but if that were true, he would have offered the application to Bowers as documentation. Williger’s statement in the evaluation, finding it unlikely that Brandhorst deliberately misled Bowers, is unpersuasive. She reaches her conclusion by test results and interviews, not by observing the sworn testimony of witnesses.

Our findings on the termination control our conclusion on the Committee statements. Bowers’ description of the termination differs too much from Brandhorst’s for both to be honest characterizations. The termination letter that Bowers drafted referred to a 30-day period before

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<sup>33</sup>*Grace v. Missouri Gaming Comm’n*, 51 S.W.3d 891, 900-01 (Mo. App., W.D. 2001).

<sup>34</sup>*Daffin v. Daffin*, 567 S.W.2d 672, 677 (Mo. App., K.C.D. 1978).

<sup>35</sup>*Nigro v. Research College of Nursing*, 876 S.W.2d 681, 686 (Mo. App., W.D. 1994).

the end of employment, but that date – October 10, 2003 – does not support Brandhorst’s version. Further, the 30 days was only one option; the other was immediate termination. In either event, the termination letter describes its effect in ending Brandhorst’s practice at Bowers’ offices as immediate. Bowers’ actions are consistent with Brandhorst having chosen the latter option. She immediately informed the Committee of the events that she described under oath. Her description of the termination was definite, unequivocal, and persuasive. Brandhorst offers no motivation for Bowers to fabricate a tale of firing instead of resignation. The Committee has carried its burden of proving that Brandhorst misled Bowers as to malpractice insurance and misled the Committee by stating that he resigned.

That conduct shows misrepresentation, deception, dishonesty, and misconduct. Because he committed it for gain, it constitutes fraud. That conduct also carries the Committee’s burden of proving a violation of professional trust as to the Bowers charges. Brandhorst violated 4 CSR 235.5.030(11). He is subject to denial or probation under § 337.035.2(3), (5), (6), (13), and (15).

As to the Committee statements, no professional trust existed between the Committee and Brandhorst. The Committee statements did not violate a professional trust. They are not a reason for denial or probation under § 337.035.2(3).

## II. Competence and Character

The Committee cites several provisions allowing denial or discipline on an assessment of the applicant or licensee as a whole.

The Committee cites § 337.020.2:

Each applicant, whether for temporary, provisional or permanent licensure, shall submit evidence satisfactory to the [C]ommittee that the applicant . . . is of good moral character[.]

Good moral character is honesty, fairness, and respect for the law and the rights of others.<sup>36</sup>

Because an application requires evidence of good moral character, we infer that the Committee may deny an application for lack of good moral character. We also conclude that an applicant's lack of good moral character will "serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action" as required by § 620.149 if the conduct demonstrating his lack of good moral character is cause for discipline.<sup>37</sup>

The Committee cites the DWI, which:

[a] person commits . . . if he operates a motor vehicle while in an intoxicated or drugged condition.[<sup>38</sup>]

That conduct indicates a lack of respect for the law and the rights of others. Under § 314.200, we may consider the DWI conviction as evidence that Brandhorst lacks good moral character, but we must also consider:

- the nature of DWI in relation to a psychologist license,
- the date of the DWI conviction,
- Brandhorst's conduct since the DWI conviction, and
- other evidence of Brandhorst's character.

A DWI relates to psychology insofar as a psychologist may treat a patient for substance abuse, or is impaired while practicing. The date of the conviction is 20 years in the past, five years before receiving a provisional license as a psychologist. There is no evidence of any similar offenses to

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<sup>36</sup>*State ex rel. McAvoy v. Louisiana Bd. of Med. Examiners*, 115 So.2d 833, 839 n.2 (La. 1959); *Florida Bd. of Bar Examiners Re: G.W.L.*, 364 So.2d 454, 458 (Fla. 1978).

<sup>37</sup>The Committee argues that Brandhorst "violated" § 337.020.2 by lacking good moral character, but that statute only requires an application to include evidence of good moral character. So an applicant "violates" § 337.020.2 by omitting evidence of good moral character from an application. Brandhorst submitted evidence of good moral character to the Committee in the form of letters attesting to his character. He did not "violate" § 337.020.2.

<sup>38</sup>Section 577.010.1.

show an ongoing or recurrent problem with alcohol that could impair a psychologist's function. The DWI does not show that Brandhorst lacks good moral character.

The Committee cites the Mohave conduct, which also shows disrespect for the rights of others. Analogizing to a conviction, we consider the Mohave conduct closely related to the practice of psychology because of the potential for exploitation in the psychologist/patient relationship. But the date of the Mohave conduct is remote, and the Committee does not allege any further lapse of the same nature. Letters of recommendation show the authors' knowledge of the Mohave conduct and attest that Brandhorst understands his error, acknowledges his guilt, and has embraced a new moral code. That evidence shows rehabilitation from such behavior.<sup>39</sup> The Mohave conduct does not show that Brandhorst lacks good moral character.

The Committee cites the Bowers charges and the Committee statements as evidence that Brandhorst lacks good moral character. Intentional concealment of material facts in the practice of the licensed profession demonstrates a lack of good moral character.<sup>40</sup> We have found not only such concealment, but also affirmative misrepresentation as to malpractice insurance and the Committee statements. In the evaluation, Williger states that it is unlikely that Brandhorst deliberately misled Bowers, but that testimony is less persuasive than our observation of sworn testimony from Bowers and Brandhorst. He is subject to denial under § 337.020.2.

As to the Committee statements, the Committee also cites the provisions of § 337.035.2(5) allowing denial and discipline for:

[i]ncompetency . . . in the performance of the functions or duties of  
[a psychologist.]

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<sup>39</sup>*Francois v. State Bd. of Regis'n for the Healing Arts*, 880 S.W.2d 601, 603 (Mo. App., E.D. 1994).

<sup>40</sup>*Harris v. Hunt*, 122 S.W.3d 683, 688 (Mo. App., E.D. 2003).

The Committee also cites the evaluation under ethical rule 4 CSR 235-5.030(4)(A):<sup>41</sup>

Impaired Psychologist. The psychologist shall not undertake or continue a professional relationship with a client when the competency of the psychologist is or could reasonably be expected to be impaired due to mental, emotional, [or] physiologic . . . conditions.

Competence is sufficient professional ability and the disposition to use it in performing an occupation.<sup>42</sup> The Committee argues that insight is the psychologist's special skill and that to share it with others he must first apply it to himself.

The Committee argues that the evaluation proves that Brandhorst's personal insight is impaired, which shows a violation of the regulation, and is a reason for a probationary license under § 337.035.2(6) and (15), and its Regulation 4 CSR 235-5.030(11), which allow denial or discipline for violations of law. Brandhorst argues the opposite. We find the evaluation unpersuasive as to either side's argument because it does not address the Committee statements. Because the Committee has the burden of proof, we find no violation of 4 CSR 235-5.030(4)(A) or (11) based on the evaluation.

The malpractice misrepresentation and Committee statements reflect on Brandhorst generally because they are repeated fraud, showing disrespect for the system from which he seeks a license. They are offenses so grave that they reflect generally on Brandhorst's respect for the law and the rights of others and his disposition to use professional abilities generally. The Committee has carried its burden of proving that Brandhorst is incompetent, lacks good moral character, and is subject to denial or probation under § 337.020.2 and 337.035.2(5).

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<sup>41</sup>Chapter 4 CSR 235 is now numbered as Chapter 20 CSR 2235.

<sup>42</sup>Section 1.020(8); *Johnson v. Missouri Bd. of Nursing Adm'rs*, 130 S.W.3d 619, 642 (Mo. App., W.D. 2004).

### III. Our Exercise of Discretion

We must exercise the same degree of discretion that the Committee has because there is no other procedure for making a decision that applies discretion to facts found on the record. Unlike license discipline under § 621.110, the General Assembly has provided no separate contested case before the Board on which to base an exercise of discretion.

[I]n the case of license revocations, the legislature purposefully and distinctly set forth a precise division of functions, leaving no room for doubt or speculation as to the legislative intention. No similar division of functions has been specified with respect to original licensure covered by § 161.302.<sup>[43]</sup>

When we review an agency decision, we must do whatever the agency may do, and we may do whatever the agency may do.<sup>44</sup> For example, when a petitioner seeks our review of a notice of income tax deficiency, and our review shows that more tax was due than the notice of deficiency did, our decision is that the petitioner owes more tax.<sup>45</sup> That is what our review means.<sup>46</sup>

We have found that the Mohave conduct was a violation of professional trust under § 337.035.2(13), which allows probation. But the Mohave conduct pre-dates Brandhorst's training as a psychologist. Since then, Brandhorst has repeatedly acknowledged the wrongful nature of his conduct and maintained strict boundaries to guard vulnerable populations like students and clients from his social life. The Committee alleges, and the record shows, no recidivism on such behavior. Brandhorst's rehabilitation from the behavior shown in the

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<sup>43</sup>Now numbered § 621.045. *Finch*, 514 S.W.2d 608, 615.

<sup>44</sup>*J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16 (Mo. banc 1990). Ironically, the Committee cites that opinion for the opposite conclusion.

<sup>45</sup>*Id.* This is the general rule absent some statutory limitation. For example, when the Director of Revenue denies an income tax refund claim, the statutes limit our decision to the grounds that the taxpayer cited in the refund claim. *Matteson v. Director of Revenue*, 909 S.W.2d 356, 360-361 (Mo. banc 1995). No such limitation appears in the words of § 620.149.

<sup>46</sup>796 S.W.2d at 20-21.

Mohave conduct is uncontroverted.<sup>47</sup> Therefore, the Mohave conduct does not persuade us to subject Brandhorst's license to probation.

But as to the malpractice misrepresentation and the Committee statements, the Committee has proved too much. Having shown that Brandhorst obtained employment by fraud, tried to obtain a license by fraud, and lacks the character and competence to practice as a psychologist, the Committee asks us to decide in favor of issuing Brandhorst a license. That result does not follow from any evidence in the record.

The record contains recommendations as to licensure, but they are not helpful because they do not address the Committee statements. Only the Committee addressed the Committee statements. The record specifically shows that the Committee did not employ its own expertise in deciding terms of probation. The Committee's witness expressly stated that the terms in the order of April 22, 2005, are the "standard" terms.<sup>48</sup> They are not related in any way to the facts of Brandhorst's case.

"[T]he terms of the probation imposed" must be part of our decision because they, like "the basis therefor, and the date such action shall become effective" are part of the action under § 620.149 of which Brandhorst seeks our de novo review.<sup>49</sup> The terms of probation are not the subject of any evidence in the record. The Committee believed that we would operate as an appellate court, and Brandhorst's position was that no probation is allowed, so neither party supported any safeguard on Brandhorst's practice with any expert testimony.

But no expertise is necessary to understand that obtaining employment, and attempting to obtain a license, by fraud constitutes strong evidence that the applicant is not ready to practice in

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<sup>47</sup>See *Francois v. State Bd. of Regis'n for the Healing Arts*, 880 S.W.2d 601, 603 (Mo. App., E.D. 1994).

<sup>48</sup>Tr. at 49.

<sup>49</sup>Section 620.149.2.

a manner that safeguards the public. Public safety is our focus because that is the purpose of the licensing laws.<sup>50</sup> As the courts have stated:

The license granted places the seal of the state's approval upon the licensee and certifies to the public that he possesses these requisites. [<sup>51</sup>]

Specifically:

The purpose of § 334.100 is the protection of the public in safeguarding public health[.<sup>52</sup>]

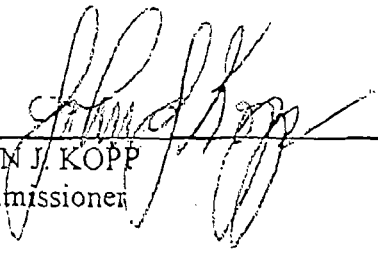
That language articulates the ultimate issue when we find grounds for denial or probation: whether the applicant practices in a manner that protects the public.

We make that determination by observing not psychological status alone, but also past conduct and demeanor before us at hearing. We observe a profound disrespect for the profession of psychology, fellow psychologists, and the regulation and regulators of psychology in this state. On this record, protecting the public safety requires denying the application.<sup>53</sup>

#### Summary

We deny the application under §§ 337.020.2 and 337.035.2(3), (5), (6), (13), and (15).

SO ORDERED on May 2, 2007.

  
\_\_\_\_\_  
JOHN J. KOPP  
Commissioner

<sup>50</sup> *Finch*, 514 S.W.2d at 614-15.

<sup>51</sup> *State ex rel. Lentine v. State Bd. of Health*, 65 S.W.2d 943, 950 (Mo. 1933).

<sup>52</sup> *State Bd. of Regis'n for the Healing Arts v. Masters*, 512 S.W.2d 150, 164 (Mo. App., K.C.D. 1974).

<sup>53</sup> The parties' arguments show that neither party anticipated that conclusion. The parties may separately or jointly file a motion to reconsider, to re-open the case, or other similar post-decision motion. Such motion is due no later than 30 days from the date of mailing or delivery of this decision. Section 536.110.1; *Woodman v. Director of Revenue*, 8 S.W.3d 154, 156 (Mo. App., W.D. 1999). We do not require the parties to submit any settlement to us.



## **Appendix**

### **Section § 620.149:**

1. Whenever a board within the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of a license, the board, as an alternative to refusing to issue a license, may, at its discretion, issue to an applicant a license subject to probation.
2. The board shall notify the applicant in writing of the terms of the probation imposed, the basis therefor, and the date such action shall become effective. The notice shall also advise the applicant of the right to a hearing before the administrative hearing commission, if the applicant files a complaint with the administrative hearing commission within thirty days of the date of delivery or mailing by certified mail of written notice of the probation. If the board issues a probated license, the applicant may file, within thirty days of the date of delivery or mailing by certified mail of written notice of the probation, a written complaint with the administrative hearing commission seeking review of the board's determination. Such complaint shall set forth that the applicant or licensee is qualified for nonprobated licensure pursuant to the laws and administrative regulations relating to his or her profession. Upon receipt of such complaint the administrative hearing commission shall cause a copy of such complaint to be served upon the board by certified mail or by delivery of such copy to the office of the board, together with a notice of the place of and the date upon which the hearing on such complaint will be held. Hearings shall be held pursuant to chapter 621, RSMo. The burden shall be on the board to demonstrate the existence of the basis for imposing probation on the licensee. If no written request for a hearing is received by the administrative hearing commission within the thirty-day period, the right to seek review of the board's decision shall be considered waived.
3. If the probation imposed includes restrictions or limitations on the scope of practice, the license issued shall plainly state such restriction or limitation. When such restriction or limitation is removed, a new license shall be issued.

RECEIPT COPY

IN THE CIRCUIT COURT OF COLE COUNTY  
STATE OF MISSOURI

SCOTT R. BRANDHORST,  
Petitioner,

V.

STATE COMMITTEE OF  
PSYCHOLOGISTS,  
Respondent.

Case No.

**FILED**

MAY 24 2007

BRENDA A. UMSTATTD  
CLERK CIRCUIT COURT  
COLE COUNTY, MISSOURI

**PETITION FOR JUDICIAL REVIEW**  
**PURSUANT TO SECTION 536.100, RSMo**

**COMES NOW** Petitioner, Scott R. Brandhorst, and for his Petition for Judicial Review,  
pursuant to Section 536.100, RSMo, states the following:

1. Petitioner Scott R. Brandhorst ("Brandhorst") is a resident of Greene County, Missouri.
2. Respondent State Committee of Psychologists ("Committee") is an agency of the State of Missouri, with its principal offices located in Jefferson City, Cole County, Missouri.
3. On or about July 2, 2003, the Committee received an application for a license and provisional license as a psychologist ("Application") from Brandhorst.
4. On or about April 22, 2005, pursuant to § 620.149 RSMo., Respondent Committee issued to Brandhorst a permanent license as a psychologist, pursuant to the provisions of Chapter 337 RSMo., but subject to a one-year period of probation.
5. Petitioner filed his complaint pursuant § 620.149 RSMo. with the Administrative Hearing Commission ("AHC") on or about May 24, 2005, seeking a hearing in the court with

provisions of said statute with respect to the decision by the Committee to issue him a probated license.

6. Respondent at no time has sought or claimed that Petitioner should not have a permanent license.

7. Brandhorst filed his Complaint with the Administrative Hearing Commission ("AHC"), seeking the AHC's review of the Committee's decision to issue him a license subject to probation.

8. After extensive discovery, including depositions, the AHC conducted an evidentiary hearing January 31 with respect to whether Petitioner should have been issued a probated license. Said hearing was continued to February 7, 2006 and concluded on said date. Following the filing of the transcript of evidence with the AHC and each party submitting their proposed findings of fact and conclusions of law and proposed decision, the AHC finally issued its decision and order. A copy of said decision and order is attached hereto and incorporated herein by reference as Exhibit 1. The AHC in its decision and order found that it was error to have even issued Petitioner a license, much less that he should be put on probation. The AHC, further in its decision and order directed that the Respondent vacate and set aside and hold for naught its license to Petitioner as a psychologist.

9. Said decision by the AHC and particularly that portion finding and holding that Petitioner should not have any license as a psychologist was relief which had not been requested by either of the parties, and the Commission itself noted at page 20 of its Order and in a footnote #53 suggested that the parties either jointly or individually seek rehearing by the Commission with respect to this portion of its decision. The proceedings before the AHC constituted a "contested case" within the meaning of § 536.100 RSMo.

10. Petitioner seeks judicial review of the decision by the AHC as more particularly provided by Article 5, § 18 under the Missouri Constitution and the provisions of §§ 536.100-536.140 RSMo.

11. This Court has jurisdiction and venue lies with this court in that it is being filed in accordance with the provisions of § 536.110 RSMo.

12. Petitioner has exhausted all administrative remedies.

13. The decision and order of the AHC should be reversed and set aside and for naught held in that:

(a) Said decision violated and deprived Petitioner of his rights to due process, both substantive and procedural as more particularly guaranteed and secured by the Fourteenth Amendment of the U. S. Constitution and Article I § 10 of the Missouri Constitution in that Petitioner received no notice that he would have to defend the issuance of a permanent license;

(b) Said decision and order is unauthorized and contrary to law and the provisions of the decision and order erroneously declares and applies the law in that the AHC had no jurisdiction and/or it was in excess of their jurisdiction to find and determine whether Petitioner was or was not entitled to a license;

(c) Said decision is unsupported by competent and substantial evidence upon the whole record;

(d) Said decision was made upon unlawful procedure and without a fair trial;

(e) Said decision was arbitrary, capricious and unreasonable; and,

(f) That the decision and order constituted an abuse of discretion by the AHC.

14. The AHC erred in finding that Respondent Committee not only met its burden of proof, but "established too much".

15. The AHC erred in finding that Petitioner had committed fraud in seeking and obtaining supervised experience.

16. More specifically, the Decision should be reversed for, but not limited to, the following reasons:

(a) the finding that the Committee met its burden of proving the existence of a basis for imposing probation on Brandhorst is unsupported by competent and substantial evidence upon the whole record, is made upon unlawful procedure and without a fair trial, is arbitrary, capricious and unreasonable, and involves an abuse of discretion;

(b) the finding that the Committee carried its burden of proving that Brandhorst used fraud to gain employment and a license is unsupported by competent and substantial evidence upon the whole record, is made upon unlawful procedure and without a fair trial, is arbitrary, capricious and unreasonable, and involves an abuse of discretion, particularly because, in making its finding, the AHC erroneously admitted and relied upon Respondent's Exhibit 29, which is a transcript of a hearing Brandhorst attended before the Committee, when a proper foundation had not been laid for the admission of the exhibit, when the original tape of the hearing was unavailable, when all individuals speaking cannot be identified, and when there are portions of the transcript that indicate the tape was inaudible;

(c) the finding that cause exists to deny Brandhorst's Application is in excess of the statutory authority and jurisdiction of the AHC and is unauthorized by law, in that, pursuant to § 620.149, RSMo, the AHC only has the authority to determine whether a

probated license should issue, and if so, on what terms, and is further made upon unlawful procedure and without a fair trial, and is unsupported by competent and substantial evidence upon the whole record, is arbitrary, capricious and unreasonable, and involves an abuse of discretion;

(d) the exercise of discretion in favor of denying Brandhorst's Application is in excess of the statutory authority and jurisdiction of the AHC, is unauthorized by law, is made upon unlawful procedure and without a fair trial, is unsupported by competent and substantial evidence upon the whole record, is arbitrary, capricious and unreasonable, and involves an abuse of discretion;

(e) by denying Brandhorst's Application, the AHC created a result contrary to, and more harsh than, the Board's initial determination, which is in excess of the statutory authority and jurisdiction of the AHC and unauthorized by law, in that, this case is not a refusal to renew case and under § 620.149, RSMo, the AHC only has the authority to determine whether a probated license should issue, and if so, on what terms, and is further unsupported by competent and substantial evidence upon the whole record, is arbitrary, capricious and unreasonable, and involves an abuse of discretion

(f) the statement in Footnote 53 of the Decision that the parties may separately or jointly file a motion to reconsider, to re-open the case, or other similar post-decision motion with the AHC within 30 days from the Decision is in excess of the statutory authority and jurisdiction of the AHC, is unauthorized by law, is arbitrary, capricious and unreasonable, and involves an abuse of discretion;

(g) by denying Brandhorst's motion in limine and allowing evidence of his employment with Sandra Bowers, Psy.D., in which Brandhorst has a fundamental right of privacy, to be admitted in the record in this case, the AHC violated Constitutional provisions, including, but not limited to, Amendment XIV to the United States Constitution and Sections 2 and 10 of Article I of the Constitution of Missouri of 1945, and acted in excess of its statutory authority and jurisdiction; and the denial of the motion in limine is further unauthorized by law, made upon unlawful procedure and without a fair trial, arbitrary, capricious and unreasonable, and involves an abuse of discretion;

(h) by maintaining its order overruling Brandhorst's motion in limine and objection to the admission of Respondent's Exhibit 29, which is a transcript of a hearing Brandhorst attended before the Committee, when a proper foundation had not been laid for the admission of the exhibit, when the original tape of the hearing was unavailable, when all individuals speaking cannot be identified, and when there are portions of the transcript that indicate the tape was inaudible, the AHC violated Constitutional provisions, including, but not limited to, Amendment XIV to the United States Constitution and Sections 2 and 10 of Article I of the Constitution of Missouri of 1945, and acted in excess of its statutory authority and jurisdiction; and the AHC's decision overruling the motion in limine is further unauthorized by law, made upon unlawful procedure and without a fair trial, arbitrary, capricious and unreasonable, and involves an abuse of discretion.

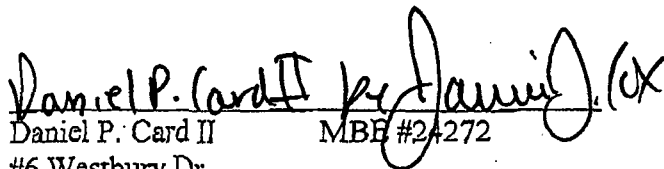
17. The decision and order by the AHC finding that Respondent Committee erred in issuing Petitioner a permanent license had and will cause Petitioner irreparable harm and is not required or necessary so as to protect the public interest.

WHEREFORE, Petitioner Brandhorst respectfully prays that this Court: (a) issue its order reversing the AHC's Decision; (b) awarding Brandhorst his reasonable attorneys fees and expenses pursuant to § 536.087, RSMo; (c) assessing all costs of these proceedings against the Committee; and (d) granting such other relief as this Court deems just and proper.

Respectfully submitted,

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*Local Counsel for Petitioner, Scott R. Brandhorst*




STATE OF MISSOURI     )  
                                      )  
COUNTY OF GREENE     )

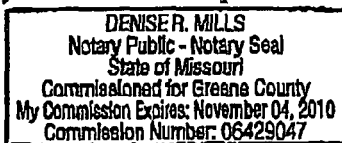
Scott R. Brandhorst, first being duly sworn, upon his oath, states that he is the Petitioner in the above-referenced proceeding; that he has read the foregoing Petition for Judicial Review and that the matters and facts set forth therein are true and correct to the best of his knowledge, information, and belief.

  
\_\_\_\_\_  
Scott R. Brandhorst, Plaintiff

Subscribed and sworn to before me this 24<sup>th</sup> day of May 2007.

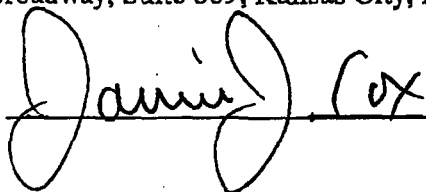
  
\_\_\_\_\_  
Notary Public

My Commission Expires:



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was faxed, to (816) 889-5006, and mailed, by U.S. certified mail, postage prepaid on this 24 day of May, 2007, to Sharon Euler, Assistant Attorney General, 3100 Broadway, Suite 609, Kansas City, MO 64111.

  
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Before the  
Administrative Hearing Commission  
State of Missouri



SCOTT R. BRANDHORST,

Petitioner,

vs.

STATE COMMITTEE OF  
PSYCHOLOGISTS,

Respondent.

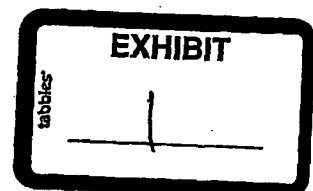
No. 05-0816 PS

**DECISION**

We deny the application of Scott R. Brandhorst for a psychologist license because the State Committee of Psychologists ("the Committee") has carried its burden of proving that Brandhorst used fraud to gain employment and a license, and the record contains no evidence to support any terms of probation.

**Procedure**

Brandhorst filed his complaint on May 24, 2005, seeking our review of the Committee's decision to issue him a license subject to probation. We convened a hearing on the complaint on January 31 and February 7, 2006. Brandhorst filed the last written argument on September 1, 2006. In written argument, each party asks us to strike portions of its adversary's written argument. We deny those motions.



a. Employment Records

On January 30, 2006, Brandhorst filed a motion in limine seeking to exclude from evidence any records and testimony relating to his employment with Sandra Bowers, Psy.D. Brandhorst argues that he has a fundamental right of privacy in his employment records, citing *State ex rel. Crowden v. Dandurand*.<sup>1</sup> But in that case, the court held that:

a subpoena for employment records must be limited to the issues raised in the pleadings. A plaintiff waives the privacy right to the extent that her pleadings raise issues to which the employment records relate.<sup>[2]</sup>

The Committee may present:

information “reasonably related to the injuries and aggravations claimed by the [petitioner] in the present suit.”<sup>[3]</sup>

When a plaintiff brings a claim involving facts in employment records, he waives confidentiality:

A plaintiff waives the privacy right to the extent that her pleadings raise issues to which the employment records relate.<sup>[4]</sup>

In other words, Brandhorst cannot claim that he has the right to an unrestricted license, which depends in part on his employment with Bowers, and bar evidence on his employment with Bowers. We deny the motion in limine as to evidence of employment.

b. Transcript

Also on January 30, 2006, Brandhorst filed a motion in limine seeking to exclude from evidence Respondent’s Exhibit 29. We denied that motion and overruled the objection, but Brandhorst renews it in written argument. Respondent’s Exhibit 29 is a transcript of a hearing before the Committee. Brandhorst objects that the Committee has not offered the proper foundation. Brandhorst cites rules of evidence that rely on the availability of the original tape

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<sup>1</sup>970 S.W.2d 340, 343 (Mo. banc 1998).

<sup>2</sup>*Id.* (citations omitted).

<sup>3</sup>*State ex rel. Tally v. Grimm*, 722 S.W.2d 604, 605 (Mo. banc 1987).

<sup>4</sup>970 S.W.2d at 343.

recording, including the rule of spoliation and the best evidence rule, applicable in a circuit court trial.

But for our procedure – a contested case – the General Assembly has provided different rules. Section 536.070<sup>5</sup> provides:

(2) Each party shall have the right . . . to introduce exhibits[.]

\* \* \*

(9) Copies of writings, documents and records shall be admissible without proof that the originals thereof cannot be produced, if it shall appear by testimony or otherwise that the copy offered is a true copy of the original[.]<sup>6</sup>

(10) Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of an act, transaction, occurrence or event, shall be admissible as evidence of the act, transaction, occurrence or event, if it shall appear that it was made in the regular course of any business, and that it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence, or event or within a reasonable time thereafter. All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect the weight of such evidence, but such showing shall not affect its admissibility. The term “business” shall include business, profession, occupation and calling of every kind.

Under those provisions, the Committee laid the proper foundation for entering Respondent’s Exhibit 29 into the record. All other circumstances go to the weight of the evidence. Therefore, we maintain our order overruling the objection to Respondent’s Exhibit 29.

### Findings of Fact

1. On June 4, 1998, the Boone County Circuit Court found Brandhorst guilty, on his guilty plea, of driving while intoxicated (“DWI”). On November 30, 1998, the court imposed sentence, but suspended its execution.

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<sup>5</sup>Statutory references are to RSMo 2000 unless otherwise noted.

<sup>6</sup>This provision also allows us to sustain a best evidence objection if we give the Committee a chance to produce the original record, but we did not sustain the objection.

2. In 1998 and 1999, Brandhorst was employed at Mohave Mental Health ("Mohave") in Lake Havasu City, Arizona, as a State-licensed professional counselor. While so employed, he had a sexual relationship with a Mohave client, not his patient, whose telephone number he found by looking at the client's intake sheet in her file without permission ("the Mohave conduct"). Based on that conduct, on January 5, 2001, the Arizona State Board of Behavioral Health Examiners entered an order pursuant to a consent agreement with Brandhorst stating that his provisional Arizona license as a professional counselor was voluntarily revoked.

3. On November 29, 2001, based on the Mohave conduct and Arizona's revocation, the Missouri Committee for Professional Counselors issued a probated license to Brandhorst in lieu of denying his professional counselor license application. Pursuant to that action, Brandhorst's license was subject to probation for one year. Brandhorst successfully completed the probation, and his license as a professional counselor in Missouri became unrestricted at that time.

4. In May 2003, Brandhorst received his doctoral degree in psychology from Forest Institute of Professional Psychology located in Springfield, Missouri. Brandhorst completed his one-year post-degree supervised experience, passed the psychology licensing exam, and passed the state jurisprudence exam.

5. On July 2, 2003, the Committee received an application for a license and provisional license as a psychologist ("the application") from Brandhorst. Brandhorst answered "yes" to the following questions on the application for provisional licensure:

16. Have you ever had a professional license issued to you disciplined, restricted or limited in any way by a professional licensing board of this state, or any other state or country? (including but not limited to psychology?)

17. Have you ever been disciplined formally or informally for unethical behavior or unprofessional conduct while holding any professional license?

\* \* \*

19. Have you ever been convicted, adjudged guilty by a court, pleaded guilty or pleaded nolo contendere in any criminal prosecution whether or not sentence was imposed?

Brandhorst attached a letter to his application for provisional licensure explaining his answers of "yes" to those questions.

6. Brandhorst's application states that Sandy Bowers, Psy.D., was the supervisor for Brandhorst's post-degree supervised experience. He worked for Bowers at the Bowers Center for Children and Families. Brandhorst did not like the position with Bowers because of the community and Bowers' practice style and began to consider other placements.

7. Brandhorst's agreement with Bowers included producing proof of malpractice insurance. Brandhorst applied for malpractice insurance when he started working for Bowers in July 2003. Bowers set a deadline for him to produce proof of malpractice insurance, but he produced none. On September 11, 2003, Brandhorst told Bowers that his application for insurance was denied and revealed to her information on the Mohave conduct.

8. On September 11, 2003, Bowers gave Brandhorst a "Letter of Termination" for him to sign. The letter stated:

This a 30-day notice of the termination of Scott Brandhorst's employment and supervision at the Bowers Center for Children and Families.

Reason ["the Bowers charges"]:

Misrepresentation of having professional liability insurance coverage while practicing

Inability to become insured

Withholding information about being on probation

Effective immediately:

Dr. Brandhorst will be prohibited from participating in any type of business at the Bowers Center, including providing therapy or evaluations, accessing records, talking with clients or staff. He is prohibited from talking with professional contacts (e.g. DFS, caseworkers, etc.) regarding current cases associated with the Bowers Center. Additionally, he will be prohibited from coming onto the property including the parking lot, yard, and inside the office. This action is taken for professional liability insurance reasons.

Severance Pay:

Dr Brandhorst will be paid \$ 180.00 as severance pay. This amount is equivalent to the pay he received in the past month and could possibly have made during the next 30 days. If he obtains a Medicaid number and we are able to collect for the services he rendered, we will mail him 60% of those earnings. The Bowers Center will also pay him 60% of any other collections that are made from the services he rendered.

I have read and understand the terms of this termination. I accept the 30 day notice which places my final day of employment on October 10, 2003.

I will attend an exit interview on this date.

\_\_\_\_\_  
Scott Brandhorst, Psy. D, LPC

\_\_\_\_\_  
Date

\_\_\_\_\_  
Sandy Bowers, Psy.D  
Licensed Clinical Psychologist and Supervisor  
-OR

\_\_\_\_\_  
Date

I have read the terms of this termination. I would prefer an immediate termination effective today.  
I consider today's meeting as my exit interview.

\_\_\_\_\_  
Scott Brandhorst, Psy. D, LPC

\_\_\_\_\_  
Date

\_\_\_\_\_  
Sandy Bowers, Psy.D

\_\_\_\_\_  
Date

Brandhorst did not sign the Letter of Termination.

9. Also on September 11, 2003, When Brandhorst left the offices, Bowers sent a facsimile transmission to the Committee informing the Committee that Brandhorst:

is no longer employed by the Bowers Center for Children and Families and is no longer under my supervision effective September 11, 2003.

Bowers also agreed to meet with Brandhorst the next day, hoping that Brandhorst might depart on amicable terms. On September 12, 2003, Brandhorst handed a letter to Bowers stating that he resigned from Bowers' employment effective that date.

10. On September 24, 2003, Brandhorst faxed a letter to the Committee stating that he would soon file a new post-degree supervision plan. On October 9, 2003, the Committee received Brandhorst's post-degree supervision plan stating that Mark Stocks, Psy.D., would be the primary supervisor for Brandhorst's post-degree supervised experience. He later added Glenna Weis as his secondary supervisor.

11. While gaining supervised experience, Brandhorst maintained strict professional distance from students and patients so as to prevent any inappropriate overlap with his social life, such as occurred in the Mohave conduct.

12. By letter dated October 24, 2003, the Committee shared with Brandhorst Bowers' statement that the termination occurred on September 11, 2003. On November 4, 2003, the Committee received from Brandhorst a letter stating:

I left the Bowers Center for Children and Families because I was provided an opportunity to take a position that fit better with my career goals.

13. At the Committee's request, Bowers filed an attestation of post-degree professional experience with the Committee on November 20, 2003, verifying that Bowers had fired Brandhorst.

14. On June 3, 2004, Brandhorst attended a closed meeting of the Committee. During that meeting, Brandhorst denied that Bowers terminated him and told the Committee that he resigned. On November 10, 2004, the Committee issued Brandhorst a probated provisional



license. As part of their agreement on the provisional license, the parties agreed that Brandhorst would undergo a psychological evaluation ("the evaluation") by a licensed psychologist of the Committee's choosing from a list submitted by Brandhorst. The Committee chose Nancy Williger, Psy.D.

15. On January 20, 2005, Brandhorst, through his counsel, requested an appearance before the Committee for the purposes of discussing his application for licensure. On February 4, 2005, the Committee received the evaluation. At the Committee's meeting on March 6, 2005, the Committee concluded that Brandhorst passed the Committee's oral interview. On April 22, 2005, the Committee issued Brandhorst a permanent license subject to one year of probation.

### **Conclusions of Law**

We have jurisdiction to hear Brandhorst's complaint because he seeks our review of the Committee's decision to issue a probationary license.<sup>7</sup>

Both parties focus on the propriety of the Committee's procedure. Brandhorst argues that the Committee did not follow its usual processes in investigating him. The Committee argues that:

it properly issued Brandhorst a probated license, in lieu of denial, that the terms and conditions of said probated license are just and reasonable and well supported by competent and substantial evidence, not contrary to law, not arbitrary, capricious nor do they constitute any abuse of discretion by the Committee.

The Committee argues that this Commission functions as an appellate court, reviewing the Committee's action for error, only to affirm or deny and not to exercise any discretion. The Committee's argument is contrary to all authority on the issue.

The Committee argues that no case law discusses § 620.149. But case law expressly states that a statute purporting to provide appellate court-type review before this Commission

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<sup>7</sup>Section 620.149.2. We set forth that section at length as an appendix to this decision.

violates the Missouri Constitution's separation of powers clause,<sup>8</sup> or direct judicial review clause,<sup>9</sup> or both.<sup>10</sup> The Committee's reading may also violate the due process clauses in the constitutions of both Missouri<sup>11</sup> and the United States because, under the Committee's reading, a licensee could never have a discretionary decision made on the record.<sup>12</sup>

Still another reason for rejecting the statutory construction argued for by the [Committee] is that to do otherwise would raise serious constitutional problems. One such problem would be that of procedural due process. If the [Committee] were correct, it would have the right to exercise a discretion concerning the licensure of applicants without holding any hearing whatsoever. This is the necessary result of the [Committee]'s position, since . . . it no longer has any power to hold hearings or make findings of fact. The discretionary denial of a license under those circumstances might very well be vulnerable under the due process requirement that such a licensing discretion can be exercised only "after fair investigation, with such a notice, hearing and opportunity to answer for the applicant as would constitute due process."

Another constitutional question which would be raised by accepting the [Committee]'s statutory interpretation is that of equal protection of law. Any discretion exercised in a manner unrelated to factual findings could be vulnerable to serious charges that this constituted arbitrary action.<sup>13</sup>

The Committee cites no case law overruling those authorities.

The statutes also refute the Committee's argument. No statute authorizes us to undertake any judicial-style review of some record made before the Committee. No statute provides for filing an agency record with us. On the contrary, § 620.149.2 states:

If the board issues a probated license, the applicant may file . . . a written complaint with the administrative hearing commission seeking review of the board's determination. . . . Hearings shall be held pursuant to chapter 621, RSMo.

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<sup>8</sup>Mo. Const. art. II, § 1.

<sup>9</sup>Mo. Const. art. V, § 18.

<sup>10</sup>*Asbury v. Lombardi*, 846 S.W.2d 196, 199 (Mo. banc 1993).

<sup>11</sup>Mo. Const. art. I, § 10.

<sup>12</sup>U.S. Const. Am. V and XVI.

<sup>13</sup>*State Bd. of Regis'n for the Healing Arts v. Finch*, 514 S.W.2d 608, 614 (Mo. App., K.C.D. 1974) (citations omitted).

Chapter 621, RSMo, provides that this case is governed by Chapter 536, RSMo.<sup>14</sup> Chapter 536 provides for responsive pleadings,<sup>15</sup> discovery,<sup>16</sup> dispositive motions,<sup>17</sup> rules of evidence,<sup>18</sup> and written argument.<sup>19</sup> Our record may show facts different from those on which the Committee based its decision and may require action different from the action that the Committee took. To affirm or deny the Committee's action based on our separate record in this separate proceeding, not the Committee's record of its own proceedings, would be irrational.

The reason that the General Assembly instructs us to make a record is so that we will base our decision on it. Our procedure is "de novo," meaning "anew."<sup>20</sup> We do not superintend the Committee's operations.<sup>21</sup> The decision before us is simply the decision that was before the Committee: how to decide Brandhorst's application.<sup>22</sup> Our action is the final agency decision, subject to judicial review. Section 620.149.1 provides:

Whenever a board within the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of a license, the board, as an alternative to refusing to issue a license, may, at its discretion, issue to an applicant a license subject to probation.

The Committee's answer sets forth the Committee's reasons.<sup>23</sup> Such reasons must support both denial and discipline.<sup>24</sup> The Committee has the burden of proving the reasons for probation.

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<sup>14</sup>Section 621.135.

<sup>15</sup>Section 536.068.

<sup>16</sup>Section 536.073.2.

<sup>17</sup>Section 536.073.3.

<sup>18</sup>Section 536.070.

<sup>19</sup>Section 536.080.1.

<sup>20</sup>*Lederer v. Department of Social Servs.*, 825 S.W.2d 858, 864 (Mo. App., W.D. 1992).

<sup>21</sup>*Missouri Health Facilities Review Comm. v. Administrative Hearing Comm'n*, 700 S.W.2d 445, 450 (Mo. banc 1985).

<sup>22</sup>*Geriatric Nursing Facility v. Department of Social Servs.*, 693 S.W.2d 206, 209 (Mo. App., W.D. 1985).

<sup>23</sup>*Ballew v. Ainsworth*, 670 S.W.2d 94, 103 (Mo. App., E.D. 1984).

<sup>24</sup>Brandhorst argues that being fired by Bowers and lack of insurability are not cause for discipline. He also alleges that he disclosed the Mohave discipline and his probationary Missouri professional counselor license to the Committee. None of those assertions addresses any charge in the amended answer.

### I. Fraud

The Committee cites the Mohave conduct, the Bowers charges, and Brandhorst's written and spoken denials that Bowers fired him before the Committee ("the Committee statements") under the provisions of § 337.035.2 allowing denial and discipline for:

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

\* \* \*

(13) Violation of any professional trust or confidence;

\* \* \*

(15) Being guilty of unethical conduct as defined in "Ethical Rules of Conduct" as adopted by the Committee and filed with the secretary of state.

The Committee argues that Brandhorst violated its ethical rule 4 CSR 235-5.030(11):

(A) The psychologist shall not violate any applicable statute or administrative rule regarding the practice of psychology.

(B) Use of Fraud, Misrepresentation or Deception. The psychologist shall not use fraud, misrepresentation or deception in obtaining a psychology license, in passing a psychology licensing examination, in assisting another to obtain a psychology license or to pass a psychology licensing examination, in billing clients or third-party payors, in providing psychological service, in reporting the results of psychological evaluations or services, or in conducting any other activity related to the practice of psychology.

Professional trust is the reliance on the special knowledge and skills that professional licensure evidences.<sup>25</sup> Violation of a professional trust includes an abuse of the power imbalance on matters within the knowledge of the licensed profession between the professional and client.<sup>26</sup> But Missouri courts do not limit professional trust to clients.<sup>27</sup> Deception is the act of causing

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<sup>25</sup>*State v. Pappas*, 337 N.W.2d 490, 495 (Iowa 1983).

<sup>26</sup>*Siegel v. Kranis*, 288 N.Y.S.2d 831, 835 (N.Y. App. Div. 1968).

<sup>27</sup>*Cooper v. Missouri Bd. of Pharmacy*, 774 S.W.2d 501, 504 (Mo. App., E.D. 1989).

someone to accept something untrue as true.<sup>28</sup> Misrepresentation is a falsehood or untruth made with the intent of deceit rather than inadvertent mistake.<sup>29</sup> Fraud is an intentional perversion of truth to induce another person to act in reliance upon it.<sup>30</sup> We may infer fraudulent intent from the circumstances of the case.<sup>31</sup>

a. Mohave

As to the Mohave conduct, we infer from the record that Mohave relied on Brandhorst's professional counselor license. Because § 337.035.2(13) addresses "any" professional trust or confidence, Brandhorst's intrusion into a patient's file for personal gratification violated that trust. The Mohave conduct is a reason for denial or a probationary license under § 337.035.2(13).

The Committee also cites the Mohave conduct under § 337.035.2(6) and (15). It argues that looking into files of his employer to obtain the telephone number of a patient of his employer which resulted in a sexual relationship with that patient involved the use of misrepresentation and deception. We disagree with the Committee for two reasons. First, the Committee has not shown that Brandhorst uttered any falsehood, untruth, or perversion of truth in connection with the Mohave conduct. Second, the Committee has not shown that conduct while a professional counselor violates an ethical rule for psychologists.

b. Bowers and the Committee

As to the Bowers charges and Committee statements, the Committee additionally cites the provision of § 337.035.2(5) allowing denial and discipline for:

dishonesty . . . in the performance of the functions or duties of any profession licensed or regulated by this chapter[.]

Dishonesty is a lack of integrity, a disposition to defraud or deceive.<sup>32</sup>

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<sup>28</sup>MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 322 (11th ed. 2004).

<sup>29</sup>*Hernandez v. State Bd. of Registration for Healing Arts*, 936 S.W.2d 894, 899 n.2 (Mo. App., W.D. 1997).

<sup>30</sup>*Id.* at 899 n.3.

<sup>31</sup>*Essex v. Getty Oil Co.*, 661 S.W.2d 544, 551 (Mo. App., W.D. 1983).

<sup>32</sup>MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 359 (11th ed. 2004).

Further, as to the Committee statements, the Committee cites the provisions of § 337.035.2 allowing denial and discipline for:

(3) Use of . . . misrepresentation . . . in securing [a psychologist license];

\* \* \*

(5) . . . misconduct [or] misrepresentation . . . in the performance of the functions or duties of [a psychologist.]

Misconduct is the willful doing of a wrongful act.<sup>33</sup> Because fraud is an intentional act, it is a type of misconduct. "Concealment of a material fact of a transaction, which a party has the duty to disclose, constitutes fraud as actual as by affirmative misrepresentation."<sup>34</sup> That duty arises when the concealer is a fiduciary or has superior knowledge.<sup>35</sup>

The Committee charges that Brandhorst concealed the Mohave conduct and his lack of malpractice insurance to gain a position with Bowers, and that he lied about being fired to gain a license from the Committee. The Committee has shown no professional duty to disclose the Mohave conduct. But we agree with the Committee as to other allegations.

Brandhorst alleges that he thought that he was insured when he applied for insurance, but if that were true, he would have offered the application to Bowers as documentation. Williger's statement in the evaluation, finding it unlikely that Brandhorst deliberately misled Bowers, is unpersuasive. She reaches her conclusion by test results and interviews, not by observing the sworn testimony of witnesses.

Our findings on the termination control our conclusion on the Committee statements. Bowers' description of the termination differs too much from Brandhorst's for both to be honest characterizations. The termination letter that Bowers drafted referred to a 30-day period before

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<sup>33</sup>*Grace v. Missouri Gaming Comm'n*, 51 S.W.3d 891, 900-01 (Mo. App., W.D. 2001).

<sup>34</sup>*Daffin v. Daffin*, 567 S.W.2d 672, 677 (Mo. App., K.C.D. 1978).

<sup>35</sup>*Nigro v. Research College of Nursing*, 876 S.W.2d 681, 686 (Mo. App., W.D. 1994).

the end of employment, but that date – October 10, 2003 – does not support Brandhorst's version. Further, the 30 days was only one option; the other was immediate termination. In either event, the termination letter describes its effect in ending Brandhorst's practice at Bowers' offices as immediate. Bowers' actions are consistent with Brandhorst having chosen the latter option. She immediately informed the Committee of the events that she described under oath. Her description of the termination was definite, unequivocal, and persuasive. Brandhorst offers no motivation for Bowers to fabricate a tale of firing instead of resignation. The Committee has carried its burden of proving that Brandhorst misled Bowers as to malpractice insurance and misled the Committee by stating that he resigned.

That conduct shows misrepresentation, deception, dishonesty, and misconduct. Because he committed it for gain, it constitutes fraud. That conduct also carries the Committee's burden of proving a violation of professional trust as to the Bowers charges. Brandhorst violated 4 CSR 235.5.030(11). He is subject to denial or probation under § 337.035.2(3), (5), (6), (13), and (15).

As to the Committee statements, no professional trust existed between the Committee and Brandhorst. The Committee statements did not violate a professional trust. They are not a reason for denial or probation under § 337.035.2(3).

## II. Competence and Character

The Committee cites several provisions allowing denial or discipline on an assessment of the applicant or licensee as a whole.

The Committee cites § 337.020.2:

Each applicant, whether for temporary, provisional or permanent licensure, shall submit evidence satisfactory to the [C]ommittee that the applicant . . . is of good moral character[.]

Good moral character is honesty, fairness, and respect for the law and the rights of others.<sup>36</sup>

Because an application requires evidence of good moral character, we infer that the Committee may deny an application for lack of good moral character. We also conclude that an applicant's lack of good moral character will "serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action" as required by § 620.149 if the conduct demonstrating his lack of good moral character is cause for discipline.<sup>37</sup>

The Committee cites the DWI, which:

[a] person commits . . . if he operates a motor vehicle while in an intoxicated or drugged condition.[<sup>38</sup>]

That conduct indicates a lack of respect for the law and the rights of others. Under § 314.200, we may consider the DWI conviction as evidence that Brandhorst lacks good moral character, but we must also consider:

- the nature of DWI in relation to a psychologist license,
- the date of the DWI conviction,
- Brandhorst's conduct since the DWI conviction, and
- other evidence of Brandhorst's character.

A DWI relates to psychology insofar as a psychologist may treat a patient for substance abuse, or is impaired while practicing. The date of the conviction is 20 years in the past, five years before receiving a provisional license as a psychologist. There is no evidence of any similar offenses to

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<sup>36</sup>*State ex rel. McAvoy v. Louisiana Bd. of Med. Examiners*, 115 So.2d 833, 839 n.2 (La. 1959); *Florida Bd. of Bar Examiners Re: G.W.L.*, 364 So.2d 454, 458 (Fla. 1978).

<sup>37</sup>The Committee argues that Brandhorst "violated" § 337.020.2 by lacking good moral character, but that statute only requires an application to include evidence of good moral character. So an applicant "violates" § 337.020.2 by omitting evidence of good moral character from an application. Brandhorst submitted evidence of good moral character to the Committee in the form of letters attesting to his character. He did not "violate" § 337.020.2.

<sup>38</sup>Section 577.010.1.



show an ongoing or recurrent problem with alcohol that could impair a psychologist's function.

The DWI does not show that Brandhorst lacks good moral character.

The Committee cites the Mohave conduct, which also shows disrespect for the rights of others. Analogizing to a conviction, we consider the Mohave conduct closely related to the practice of psychology because of the potential for exploitation in the psychologist/patient relationship. But the date of the Mohave conduct is remote, and the Committee does not allege any further lapse of the same nature. Letters of recommendation show the authors' knowledge of the Mohave conduct and attest that Brandhorst understands his error, acknowledges his guilt, and has embraced a new moral code. That evidence shows rehabilitation from such behavior.<sup>39</sup> The Mohave conduct does not show that Brandhorst lacks good moral character.

The Committee cites the Bowers charges and the Committee statements as evidence that Brandhorst lacks good moral character. Intentional concealment of material facts in the practice of the licensed profession demonstrates a lack of good moral character.<sup>40</sup> We have found not only such concealment, but also affirmative misrepresentation as to malpractice insurance and the Committee statements. In the evaluation, Williger states that it is unlikely that Brandhorst deliberately misled Bowers, but that testimony is less persuasive than our observation of sworn testimony from Bowers and Brandhorst. He is subject to denial under § 337.020.2.

As to the Committee statements, the Committee also cites the provisions of § 337.035.2(5) allowing denial and discipline for:

[i]ncompetency . . . in the performance of the functions or duties of  
[a psychologist.]

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<sup>39</sup>*Francois v. State Bd. of Regis'n for the Healing Arts*, 880 S.W.2d 601, 603 (Mo. App., E.D. 1994).

<sup>40</sup>*Harris v. Hunt*, 122 S.W.3d 683, 688 (Mo. App., E.D. 2003).

The Committee also cites the evaluation under ethical rule 4 CSR 235-5.030(4)(A):<sup>41</sup>

Impaired Psychologist. The psychologist shall not undertake or continue a professional relationship with a client when the competency of the psychologist is or could reasonably be expected to be impaired due to mental, emotional, [or] physiologic . . . conditions.

Competence is sufficient professional ability and the disposition to use it in performing an occupation.<sup>42</sup> The Committee argues that insight is the psychologist's special skill and that to share it with others he must first apply it to himself.

The Committee argues that the evaluation proves that Brandhorst's personal insight is impaired, which shows a violation of the regulation, and is a reason for a probationary license under § 337.035.2(6) and (15), and its Regulation 4 CSR 235-5.030(11), which allow denial or discipline for violations of law. Brandhorst argues the opposite. We find the evaluation unpersuasive as to either side's argument because it does not address the Committee statements. Because the Committee has the burden of proof, we find no violation of 4 CSR 235-5.030(4)(A) or (11) based on the evaluation.

The malpractice misrepresentation and Committee statements reflect on Brandhorst generally because they are repeated fraud, showing disrespect for the system from which he seeks a license. They are offenses so grave that they reflect generally on Brandhorst's respect for the law and the rights of others and his disposition to use professional abilities generally. The Committee has carried its burden of proving that Brandhorst is incompetent, lacks good moral character, and is subject to denial or probation under § 337.020.2 and 337.035.2(5).

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<sup>41</sup>Chapter 4 CSR 235 is now numbered as Chapter 20 CSR 2235.

<sup>42</sup>Section 1.020(8); *Johnson v. Missouri Bd. of Nursing Adm'rs*, 130 S.W.3d 619, 642 (Mo. App., W.D. 2004).

### III. Our Exercise of Discretion

We must exercise the same degree of discretion that the Committee has because there is no other procedure for making a decision that applies discretion to facts found on the record.

Unlike license discipline under § 621.110, the General Assembly has provided no separate contested case before the Board on which to base an exercise of discretion.

[I]n the case of license revocations, the legislature purposefully and distinctly set forth a precise division of functions, leaving no room for doubt or speculation as to the legislative intention. No similar division of functions has been specified with respect to original licensure covered by § 161.302.<sup>[43]</sup>

When we review an agency decision, we must do whatever the agency may do, and we may do whatever the agency may do.<sup>44</sup> For example, when a petitioner seeks our review of a notice of income tax deficiency, and our review shows that more tax was due than the notice of deficiency did, our decision is that the petitioner owes more tax.<sup>45</sup> That is what our review means.<sup>46</sup>

We have found that the Mohave conduct was a violation of professional trust under § 337.035.2(13), which allows probation. But the Mohave conduct pre-dates Brandhorst's training as a psychologist. Since then, Brandhorst has repeatedly acknowledged the wrongful nature of his conduct and maintained strict boundaries to guard vulnerable populations like students and clients from his social life. The Committee alleges, and the record shows, no recidivism on such behavior. Brandhorst's rehabilitation from the behavior shown in the

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<sup>43</sup>Now numbered § 621.045. *Finch*, 514 S.W.2d 608, 615.

<sup>44</sup>*J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16 (Mo. banc 1990). Ironically, the Committee cites that opinion for the opposite conclusion.

<sup>45</sup>*Id.* This is the general rule absent some statutory limitation. For example, when the Director of Revenue denies an income tax refund claim, the statutes limit our decision to the grounds that the taxpayer cited in the refund claim. *Matteson v. Director of Revenue*, 909 S.W.2d 356, 360-361 (Mo. banc 1995). No such limitation appears in the words of § 620.149.

<sup>46</sup>796 S.W.2d at 20-21.

Mohave conduct is uncontroverted.<sup>47</sup> Therefore, the Mohave conduct does not persuade us to subject Brandhorst's license to probation.

But as to the malpractice misrepresentation and the Committee statements, the Committee has proved too much. Having shown that Brandhorst obtained employment by fraud, tried to obtain a license by fraud, and lacks the character and competence to practice as a psychologist, the Committee asks us to decide in favor of issuing Brandhorst a license. That result does not follow from any evidence in the record.

The record contains recommendations as to licensure, but they are not helpful because they do not address the Committee statements. Only the Committee addressed the Committee statements. The record specifically shows that the Committee did not employ its own expertise in deciding terms of probation. The Committee's witness expressly stated that the terms in the order of April 22, 2005, are the "standard" terms.<sup>48</sup> They are not related in any way to the facts of Brandhorst's case.

"[T]he terms of the probation imposed" must be part of our decision because they, like "the basis therefor, and the date such action shall become effective" are part of the action under § 620.149 of which Brandhorst seeks our de novo review.<sup>49</sup> The terms of probation are not the subject of any evidence in the record. The Committee believed that we would operate as an appellate court, and Brandhorst's position was that no probation is allowed, so neither party supported any safeguard on Brandhorst's practice with any expert testimony.

But no expertise is necessary to understand that obtaining employment, and attempting to obtain a license, by fraud constitutes strong evidence that the applicant is not ready to practice in

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<sup>47</sup>See *Francois v. State Bd. of Regis'n for the Healing Arts*, 880 S.W.2d 601, 603 (Mo. App., E.D. 1994).

<sup>48</sup>Tr. at 49.

<sup>49</sup>Section 620.149.2.

a manner that safeguards the public. Public safety is our focus because that is the purpose of the licensing laws.<sup>50</sup> As the courts have stated:

The license granted places the seal of the state's approval upon the licentiate and certifies to the public that he possesses these requisites. [<sup>51</sup>]

Specifically:

The purpose of § 334.100 is the protection of the public in safeguarding public health[.<sup>52</sup>]

That language articulates the ultimate issue when we find grounds for denial or probation: whether the applicant practices in a manner that protects the public.

We make that determination by observing not psychological status alone, but also past conduct and demeanor before us at hearing. We observe a profound disrespect for the profession of psychology, fellow psychologists, and the regulation and regulators of psychology in this state. On this record, protecting the public safety requires denying the application.<sup>53</sup>

#### Summary

We deny the application under §§ 337.020.2 and 337.035.2(3), (5), (6), (13), and (15).

SO ORDERED on May 2, 2007.

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JOHN J. KOPP  
Commissioner

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<sup>50</sup> *Finch*, 514 S.W.2d at 614-15.

<sup>51</sup> *State ex rel. Lentine v. State Bd. of Health*, 65 S.W.2d 943, 950 (Mo. 1933).

<sup>52</sup> *State Bd. of Regis'n for the Healing Arts v. Masters*, 512 S.W.2d 150, 164 (Mo. App., K.C.D. 1974).

<sup>53</sup> The parties' arguments show that neither party anticipated that conclusion. The parties may separately or jointly file a motion to reconsider, to re-open the case, or other similar post-decision motion. Such motion is due no later than 30 days from the date of mailing or delivery of this decision. Section 536.110.1; *Woodman v. Director of Revenue*, 8 S.W.3d 154, 156 (Mo. App., W.D. 1999). We do not require the parties to submit any settlement to us.

## Appendix

### Section § 620.149:

1. Whenever a board within the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of a license, the board, as an alternative to refusing to issue a license, may, at its discretion, issue to an applicant a license subject to probation.

2. The board shall notify the applicant in writing of the terms of the probation imposed, the basis therefor, and the date such action shall become effective. The notice shall also advise the applicant of the right to a hearing before the administrative hearing commission, if the applicant files a complaint with the administrative hearing commission within thirty days of the date of delivery or mailing by certified mail of written notice of the probation. If the board issues a probated license, the applicant may file, within thirty days of the date of delivery or mailing by certified mail of written notice of the probation, a written complaint with the administrative hearing commission seeking review of the board's determination. Such complaint shall set forth that the applicant or licensee is qualified for nonprobated licensure pursuant to the laws and administrative regulations relating to his or her profession. Upon receipt of such complaint the administrative hearing commission shall cause a copy of such complaint to be served upon the board by certified mail or by delivery of such copy to the office of the board, together with a notice of the place of and the date upon which the hearing on such complaint will be held. Hearings shall be held pursuant to chapter 621, RSMo. The burden shall be on the board to demonstrate the existence of the basis for imposing probation on the licensee. If no written request for a hearing is received by the administrative hearing commission within the thirty-day period, the right to seek review of the board's decision shall be considered waived.

3. If the probation imposed includes restrictions or limitations on the scope of practice, the license issued shall plainly state such restriction or limitation. When such restriction or limitation is removed, a new license shall be issued.

IN THE CIRCUIT COURT OF COLE COUNTY  
STATE OF MISSOURI

RECEIPT COPY  
FILED

MAY 24 2007

BRENDA A. UMSTATTD  
CLERK CIRCUIT COURT  
COLE COUNTY, MISSOURI

SCOTT R. BRANDHORST,  
Petitioner,

v.

STATE COMMITTEE OF  
PSYCHOLOGISTS,  
Respondent.

Case No. \_\_\_\_\_

MOTION FOR STAY ORDER  
PURSUANT TO SECTION 536.120, RSMo

COMES NOW Petitioner, Scott R. Brandhorst, and, pursuant to § 536.120, respectfully moves the Court to make and enter its order which stays the decision of the Administrative Hearing Commission ("AHC"), Exhibit 1 to Petitioner's Petition for Judicial Review, which includes without limitation that provision of the decision and order which finds and determines that Petitioner is not qualified to have a permanent license as a psychologist and which further directs Respondent to set aside and hold for naught the license heretofore issued to Petitioner.

As grounds therefore, Petitioner states:

1. That on May 24, 2007, Petitioner duly filed with this court his Petition for Judicial Review of the decision and order by the AHC, as more particularly provided by Article V, § 18 of the Missouri Constitution and §§ 536.100-536.140 RSMo. A copy of the decision and order of the AHC is attached as Exhibit 1 to Petitioner's Petition for Judicial Review.

2. Petitioner realleges and incorporates herein by reference, as if more particularly set forth herein, each and every allegation of fact and law as more particularly set forth in his Petition for Judicial Review.

3. That Petitioner is entitled to a stay and this Court has jurisdiction pursuant to

§536.120 RSMo. to issue a stay as more particularly requested herein.

4. Since the time Respondent issued Petitioner a provisional license subject to probation on or about November 10, 2004, there has not been and there is not now a single allegation that Petitioner has in any way violated any of the laws governing the practice of psychology or any other law.

5. Unless a stay is granted, Petitioner will suffer and has suffered irreparable harm.

6. Petitioner verily believes and states that there is a substantial likelihood that he will prevail upon final adjudication of this cause.

7. Petitioner verily believes and further states that unless the AHC's Decision of May 2, 2007 is stayed, pending the final adjudication of this cause, he will suffer irreparable harm and injury, including a substantial possibility that he may lose his position of employment.

8. That the granting of the relief as requested herein is not and will not pose a threat to the public.

WHEREFORE, Plaintiff hereby prays that the Court stay the effective date and further stay all rights of enforcement of the AHC's Decision of May 2, 2007. Plaintiff further prays for such other and further interim relief as the Court deems just and appropriate under the circumstances.



Respectfully submitted,  
FAMILY LAW GROUP, L.L.C.

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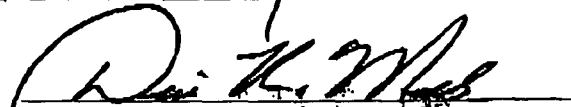
By: Johnny K. Richardson MBE #28744  
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Fax: (573) 635-0427  
*Local Counsel for Petitioner,  
Scott R. Brandhorst*

STATE OF MISSOURI     )  
                                      )  
COUNTY OF GREENE     )

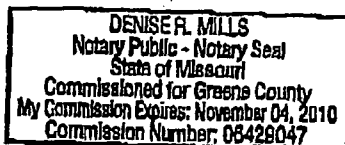
Scott R. Brandhorst, first being duly sworn, upon his oath, states that he is the Petitioner in the above-referenced proceeding; that he has read the foregoing Petition for Judicial Review and that the matters and facts set forth therein are true and correct to the best of his knowledge, information, and belief.

  
Scott R. Brandhorst, Plaintiff

Subscribed and sworn to before me this 24<sup>th</sup> day of May 2007.

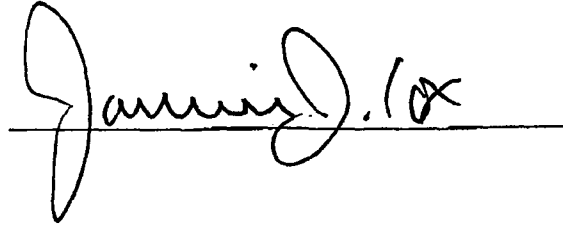
  
(Notary Public

My Commission Expires:



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was faxed, to (816) 889-5006, and mailed, by U.S. certified mail, postage prepaid on this 24 day of May, 2007, to Sharon Euler, Assistant Attorney General, 3100 Broadway, Suite 609, Kansas City, MO 64111.

A handwritten signature in cursive script, appearing to read "J. J. Fox", is written over a horizontal line.

RECEIPT COPY

FILED

MAY 24 2007

BRENDA A. UMSTATTD  
CLERK CIRCUIT COURT  
COLE COUNTY, MISSOURI

IN THE CIRCUIT COURT OF COLE COUNTY  
STATE OF MISSOURI

SCOTT R. BRANDHORST,  
Petitioner,

v.

STATE COMMITTEE OF  
PSYCHOLOGISTS,  
Respondent.

Case No. \_\_\_\_\_

**NOTICE OF HEARING AND PETITION FILED**

TO: Sharon Euler  
Assistant Attorney General  
3100 Broadway, Suite 609  
Kansas City, MO 64111

Notice is hereby given that Petitioner shall file with the Circuit Court of Cole County, Missouri, on the 24 day of May, 2007, his Petition for Judicial Review and his Motion for Stay and will on said date, or as soon thereafter as counsel may be heard call up for hearing and disposition his Motion for Stay.

Respectfully submitted,  
FAMILY LAW GROUP, L.L.C.

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Attorneys for Petitioner, Scott R. Brandhorst

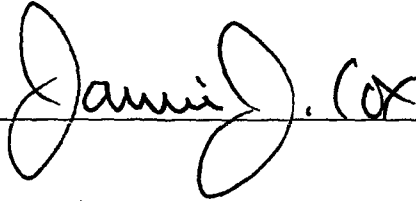
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*Local Counsel for Petitioner,  
Scott R. Brandhorst*

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\_\_\_\_\_